

Certification of Consistency

Certification ID: C20191

Step 1 - Agency Profile

A. GOVERNMENT AGENCY:

☒

State Agency

☐

Local Agency

Government Agency: Department of Water Resources

Primary Contact: Joy Khamphanh

Address: 3500 Industrial Blvd

City, State, Zip: West Sacramento, CA 95691

Telephone/Fax: (916)376-9824 /

E-mail Address: otome.lindsey@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

☒

Will Carry Out

☐

Will Approve

☐

Will Fund

Step 2 - Covered Action Profile

IT IS RECOMMENDED THAT YOU ENGAGE IN EARLY CONSULTATION WITH DSC STAFF AND/OR COMPLETE THE COVERED ACTION CHECKLIST TO DETERMINE IF THE PLAN, PROGRAM OR PROJECT IS CONSIDERED A COVERED ACTION AND TO IDENTIFY RELEVANT REGULATORY POLICIES

A. COVERED ACTION PROFILE: ☐ Plan ☐ Program ☒ Project

Title: Winter Island Tidal Habitat Restoration Project

B. PROPONENT CARRYING OUT COVERED ACTION (If different than State or Local Agency):

Proponent Name: Fish Restoration Program
Address: 3500 Industrial Blvd
City, State, Zip: West Sacramento, CA 95691

C. AT LEAST 10 DAYS PRIOR TO THE SUBMISSION OF A CERTIFICATION OF CONSISTENCY TO THE COUNCIL, agencies whose actions are not subject to open meeting laws (Bagley-Keene Open Meeting Act [Gov. Code sec 11120 et seq.] or the Brown Act [Gov. Code sec 54950 et seq.]) with regard to its certification, must post for public review and comment, their draft certification on their website and in their office, and mail to all persons requesting notice.

Any state or local public agency that is subject to open meeting laws with regard to its certification is also encouraged to take those actions.

(Note: Any public comments received during this process must be included in the record submitted to the Council in case of an appeal.)

If applicable, did you comply with this requirement? ☒ YES ☐ NO ☐ N/A

[Winter NOI.PNG](#)

D. COVERED ACTION SUMMARY: (Project Description from approved CEQA document may be used here)

Create new tidal habitat at Winter Island by: breaching exterior levees and widening an existing channel. The overarching goal of the Proposed Project is to restore tidal action to the interior of Winter Island. The Proposed Project is intended to partially fulfill the 8,000-ac tidal habitat restoration obligations of DWR contained within Reasonable and Prudent Alternative (RPA)4 of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP).

[A. Winter Island ISMND Project Description.pdf](#)

E. STATUS IN THE CEQA PROCESS: NOD has been filed

F. STATE CLEARINGHOUSE NUMBER: 2018082025
(if applicable)

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 9/1/2019 ANTICIPATED END DATE: (If available) 10/31/2019

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$8,547,000.00

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM:

J. SUPPORTING DOCUMENTS: [1. GP1 Mitigation Equivalence.docx](#), [2. GP1b2 Winter MMRP.docx](#), [3. GP1 b3 Winter Detailed Analysis.docx](#), [4. GP1b4 Winter Island AMMP.docx](#), [6. DPP2 Habitat Local Communication.docx](#), [7. ERP2 Restore Habitats at Appropriate Elevations.docx](#), [8. ERP3 Project Opportunities to Restore Habitat.docx](#), [9. ERP5 Habitat Conditions.docx](#), [Final Winter MND.PDF](#), [5a. GP1b3 2015 RMA WinterIsland_TechMemo.pdf](#), [5b. GP1b3_WinterIslandPeakVelocities+ExposureTimes_6-16-17.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

G P1 / 23 CCR SECTION 5002 – Detailed Findings to Establish Consistency with the Delta Plan.

In General: (23 CCR SECTION 5002 (a), (b), (1)) This regulatory policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action.

This regulatory policy only applies after a “proposed action” has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies listed under Delta Plan Chapters 3, 4, 5 and 7 of this form implicated by the covered action. The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal;

Specific requirements of this regulatory policy:

Mitigation Measures (23 CCR SECTION 5002 (b), (2))

- a. The covered action is not exempt from CEQA, and includes applicable feasible mitigation measures identified in the Delta Plan’s Program Environmental Impact Report, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.

Is the covered action consistent with this portion of the regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: Delta Plan Mitigation Measures and the Project-specific Environmental Commitments and/or Mitigation Measures demonstrate compliance with, or effective substitution for, the Delta Plan Mitigation Measures. [1. GP1 Mitigation Equivalence.docx](#)

Best Available Science (23 CCR SECTION 5002 (b), (3))

- b. The covered action documents use of best available science as relevant to the purpose and nature of the project.

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1A](#) is referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: Proposed Actions have adequate coverage of mitigation measures, documentation of use of Best Available Science, an Adaptive Management Plan, and financial assurances. [3. GP1 b3 Winter Detailed Ana](#)

Adaptive Management (23 CCR SECTION 5002 (b), (4))

- c. The covered action involves ecosystem restoration or water management, and includes adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1B](#) is referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: The Proposed Actions' Adaptive Management and Monitoring Plan, as it relates to regulatory policy GP1, will be implemented within a management and monitoring framework consistent with the Tidal Wetland Monitoring Framework for the Upper San Francisco Estuary and Appendix 1B of the Delta Plan. [4. GP1b4 Winter Island AMMP.docx](#)

DELTA PLAN CHAPTER 3

WR P1 / 23 CCR SECTION 5003 - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not export water from, transfer water through, or use water in the Delta.

WR P2 / 23 CCR SECTION 5004 - Transparency in Water Contracting

Is the covered action consistent with this regulatory policy? [Appendix 2A](#) and [Appendix 2B](#) are referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not involve water supply or water transfer contracts from the SWP or CVP.

DELTA PLAN CHAPTER 4

Conservation Measure: (23 CCR SECTION 5002 (c))

A conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was:

(1) Developed by a local government in the Delta; and

(2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013

is deemed to be consistent with the regulatory policies listed under Delta Plan Chapter 4 of this form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

Is a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available?

☐ YES ☐ NO ☒ N/A

Answer Justification: Winter Island is not within the boundary of an HCP or NCCP.

ER P1 / 23 CCR SECTION 5005 - Delta Flow Objectives

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not significantly affect flow in the Delta.

ER P2 / 23 CCR SECTION 5006 - Restore Habitats at Appropriate Elevations

Is the covered action consistent with this regulatory policy? [Appendix 3](#) and [Appendix 4](#) are referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: This policy covers all Proposed Actions that include habitat restoration. [7. ERP2 Restore Habitats at Appropriate Elevations.docx](#)

ER P3 / 23 CCR SECTION 5007 - Protect Opportunities to Restore Habitat

Is the covered action consistent with this regulatory policy? [Appendix 4](#) and [Appendix 5](#) are referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: This policy covers all Proposed Actions in the priority habitat restoration areas depicted in Appendix 5 of the Delta Plan. It does not cover actions outside those areas. [8. ERP3 Project Opportunities to Restore Habitat.docx](#)

ER P4 / 23 CCR SECTION 5008 - Expand Floodplains and Riparian Habitats in Levee Projects

Is the covered action consistent with this regulatory policy? [Appendix 8](#) is referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not construct new levees or substantially rehabilitate or reconstruct existing levees.

ER P5 / 23 CCR SECTION 5009 - Avoid Introductions of and Habitat for Invasive Nonnative Species

Is the covered action consistent with this regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: This policy covers all Proposed Actions that have the reasonable probability of introducing, or improving habitat conditions for nonnative invasive species. [9. ERP5 Habitat Conditions.docx](#)

DELTA PLAN CHAPTER 5

DP P1 / 23 CCR SECTION 5010 - Locate New Urban Development Wisely

Is the covered action consistent with this regulatory policy? [Appendix 6](#) and [Appendix 7](#) are referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not involve new residential, commercial, and industrial development that is not located within the areas described in Appendix 6 and Appendix 7.

DP P2 / 23 CCR SECTION 5011 - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

Is the covered action consistent with this regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: This policy covers all Proposed Actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure. [6. DPP2 Habitat Local Communication.docx](#)

DELTA PLAN CHAPTER 7

RR P1 - Prioritization of State Investments in Delta Levees and Risk Reduction

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not involve discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements.

RR P2 - Require Flood Protection for Residential Development in Rural Areas.

Is the covered action consistent with this regulatory policy? [Appendix 7](#) is referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions does not involve new residential development of five or more parcels that are not located within certain designated areas.

RR P3 - Protect Floodways

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions would not encroach in a floodway that is not either a designated floodway or regulated stream.

RR P4 - Floodplain Protection

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: Proposed Actions would not encroach in any of the following floodplain areas: the Yolo Bypass within the Delta, the Cosumnes River-Mokelumne River Confluence, and, the Lower San Joaquin River Floodplain Bypass area.